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From:

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To:

Cc:

Subject:

I remind you that _____ handles contract interpretation. You should probably get a person to look at the agreement before you the Service sign it.

The pertinent facts as we understand them are as follows. Taxpayers have outstanding income tax liabilities for tax years _____ through _____ in the amount of \$ _____. On _____, taxpayers entered into an installment agreement for these _____ years pursuant to which they pay \$ _____ per month; although the Service knew that the installment agreement will not full pay the taxpayers' liability within the collection expiration dates, the earliest of which will run in _____, it approved the agreement on _____.

On _____, _____, Group Manager, _____, recommended that the Service accept an assignment of life insurance benefits proposed by the taxpayers in an attempt to avoid enforcement action against the equity they hold in assets. Pursuant to the agreement, taxpayers' would assign to the Internal Revenue Service the death benefits from two life insurance policies owned by _____. With respect to the _____ policy, _____ represents that he has the unrestricted right to assign the policy subject only to notice and the consent of the insurance company. You have confirmed that according to the application for the _____ policy, Section 16-Beneficiaries, the "owner may change any beneficiary unless designated as irrevocable." You have confirmed that currently _____ wife is designated as the primary beneficiary and his children as the secondary beneficiaries; the children will be the beneficiaries if _____ predeceases _____. You also have indicated that neither designation is marked irrevocable. _____ has represented that he has made no prior assignments of the policy and that the policy is not encumbered in any way.

_____ noted in her recommendation to _____, Area Counsel _____, that _____ has a terminal illness that likely will result in his death within the next four years. _____ recommended that the Service accept the taxpayers' proposal, noting that the immediate liquidation of the polices would provide some immediate funds but would result in a significant shortfall with respect to the tax liability. The assignment of death benefits would result in the liability being paid in full.

Once an installment agreement is entered, it remains in effect for the term of the agreement except as otherwise provided in section 6159. Section 6159(b)(2)-(4) provides that the Service may terminate an installment agreement if the information given to the Service prior to the acceptance of the agreement was inaccurate or incomplete, the collection of the tax to which the agreement relates is in jeopardy, there is a subsequent change in the taxpayer's financial conditions, the taxpayer fails to provide a financial condition update when requested, or the taxpayer fails to pay an installment or any other tax. No levy may be made on any person with respect to any unpaid tax during the period that an installment agreement for the payment of the tax is in effect.

As we understand it, the taxpayers' proposal was discussed prior to the acceptance of the installment agreement but was never ratified. We also understand that the taxpayers are up to date on their installments and their estimated payments for and that no other reason exists that would allow the Service to terminate the agreement. Consequently, the Service may not seize the taxpayers' assets to pay any of the liability, which is covered by the installment agreement. The taxpayers, however, still wish to assign the insurance policies to the Service to pay whatever liability remains once dies. Although the have an extant installment agreement and the Service cannot seize any of their assets while the agreement is in effect, the still owe the government taxes.

The Eighth Circuit has determined that "a life insurance policy may be assigned as collateral without the consent of the beneficiary if the policy reserves that right to the insured." Luxton v. United States, 340 F.3d 659, 661 (8th Cir. 2003) (citing the Minnesota Supreme Court's decision in Jamesville State Bank v. Life Ins. Co., 274, 232, 233 (1937)). We recommend that if the are willing to assign the benefits of the insurance policies to the United States, the Service accept their offer. There is nothing that prevents the Service from accepting another form of payment outside of an extant installment agreement.